

Written Evidence submitted by Professor Fiona Smith (FRE0130)

A. Introduction

1. I am Professor of International Economic Law at the School of Law, University of Leeds and N8 Chair in Agrifood Regulation. In addition, I hold the post of Associate Director for Agrifood Supply Chains at the University of Leeds Global Food and Environment Institute. In 2017, I served as Special Adviser to the House of Lords European Union Energy and Environment Sub-Committee for its report, *Brexit-Agriculture*, (HL Paper 169). My expertise lies in the area of international economic law, with a particular focus on international trade law and international investment law as they relate to agriculture and food. I have given oral evidence to two related inquiries before the House of Commons Select Committee on International Trade: on the impact of international agricultural trade law on the UK's exit from the EU in 2016; and on the effects of Covid-19 on agrifood supply chains in April 2020.
2. This written testimony is submitted in response to a letter written by the House of Commons Committee on the Future Relationship with the European Union addressed to me and dated 16 July 2020. The letter contains a series of questions exploring the progress of negotiations on the future relationship between the UK and the EU with a focus on agricultural trade. Rather than answer every question, I will respond to those issues that I believe are most pressing and which have not received as much attention in previous committees or in the media.
3. This testimony will focus on: identifying the key priorities for agrifood trade in the negotiations, taking into account the baseline that will operate if a trade agreement cannot be concluded, and the impact of Covid-19 on agrifood trade.

B. Executive Summary:

4. **The key priorities in the EU-UK trade negotiations in the context of agrifood trade should be:**
 - a. **Maintaining tariff free and quota free trade in food, feed and drink between the EU and UK after the transition period.**
 - b. **Recognition by the EU of UK's food, feed and drink safety and quality, and animal welfare standards (should these deviate from the EU's). Maintaining high food standards is critical in light of the emergence of new pathogens, like Covid-19, from animals into the human food chain.**
 - c. **Securing rules of origin that do not impede trade in food, feed and drink between the EU and the UK.**
 - d. **Protection of workers' rights.**
 - e. **Access to seasonal workers.**
5. **The UK government's default option of 'trading on World Trade Organization (WTO) rules' might not be so attractive as the WTO is experiencing its own headwinds: its dispute settlement mechanism is stymied by American opposition to the appointment of new appeals judges, and two of the world's largest economies, the United States and China, are currently involved in a trade war. 'Free trade' is a historic phenomenon,**

more relevant to the 1990s than to the twenty first century trading system. Countries are increasingly looking to their own needs, rather than focusing on keeping their borders open by lowering import taxes (tariffs) and removing export restrictions on trade in staple foods. This trend towards a national focus among trading nations has been exacerbated by the Covid-19 pandemic.

6. The impact of the Covid-19 pandemic on the agri-food sector is:
 - a. The impact of Covid-19 on the agrifood sector is dependent upon how each business fits into agrifood supply chains.
 - b. Short term supply problems during the early stages of the pandemic (December 2019-April 2020) were caused by national lockdowns; countries imposing export restrictions on key staples, like rice and cereals; the shutdown of the hospitality sector; unreliable supplies of seeds, fertilizers; the shortage of seasonal farm workers (due to quarantine and travel restrictions), employees in retail, distribution and manufacturing due to illness and 'shielding'; the lack of transportation and storage facilities; and price volatility.
 - c. Food supplies from retailers to consumers during the pandemic were more resilient than expected, however. This was due in part to the existence of frictionless trade in food, feed and drink from the EU. 80% of all food imports to UK supermarkets come from the EU during the lockdown.
 - d. The agrifood sector will continue to suffer from the adverse effects of Covid-19 in the medium to long term (April -August 2020; August 2020 and beyond). Supply chains have started to falter as small and medium-sized companies operating routinely on thin margins in key parts of the supply chain go out of business, with snowball effects for other players. Some businesses in the hospitality sector may not reopen.
 - e. The predicted global recession is likely to lead to a consolidation in the food sector resulting in more financially stable multi-national companies merging or acquiring financially weaker companies. If fewer, more powerful global food companies exist, new unfavourable supply terms could be forced onto smaller food producers and processors. Such unfavourable terms can result in significant loss of profits for the suppliers, which in turn could result in further bankruptcies.

C. Key Priorities for agrifood trade in the UK-EU trade negotiations

7. Safeguarding trade in food, feed and drink is important for the UK. The UK is a net food importer and is reliant on imports of food, feed and drink for its food security. In 2019, exports of food, feed and drink from the UK were valued at £23.6 billion, in contrast imports of those products into the UK were valued at £47.9 billion. The trade gap between UK exports and imports was £24.3 billion in 2019, and although this gap is narrower than in 2018, the longer term trend shows that between 2005 and 2019 the UK's trade gap widened by 38%.¹
8. The EU is the UK's largest trading partner. In 2019, 60% of all the UK's food, feed and drink exports were to the EU, and 70% of all imported food, feed and drink came from the EU. The Irish Republic is the most important destination for UK exported food, whilst the Netherlands is the main source of imports from EU countries.²

¹ DEFRA, *Agriculture in the UK 2019*, (2020), 129.

² DEFRA, *Agriculture in the UK 2019*, (2020), 134.

9. If a trade agreement cannot be concluded between the EU and UK to take effect at the end of the transition period, **exports** of food, feed and drink from the UK to the EU will be subject to the EU standard (MFN) tariffs. EU MFN tariffs are high for some food, feed and drink products, like dairy products (54%), sugar (31%) and cereals (22%). While UK exporters could gain access to the EU market at a reduced tariff via a tariff quota on some products (e.g. sheep and goat meat), access via this route is not guaranteed. This is because (a) access to the EU via a tariff quota is open to all WTO members (unless the tariff quota is country-specific), and (b) UK exports must still meet the EU's food safety, quality and hygiene standards. If there is no UK-EU trade agreement after transition, high tariffs and increased customs bureaucracy will act as a deterrent to companies exporting to the EU.³ The EU plans to impose customs checks and tariffs immediately on food, feed and drink exported from the UK to the EU following the end of the transition period (subject to the special provision for the island of Ireland contained in the Northern Ireland Protocol).⁴
10. High tariffs and border checks imposed in the event of no trade deal, may mean UK food, feed and drink exports to the EU become uneconomic in some cases. Some of this produce will be absorbed by UK demand in the short term or it could flow into other export markets where the UK hopes to negotiate new trade deals, like Australia and the USA, in the medium to long term.
11. Companies may take advantage of new trade agreements entered into by the UK but this is not without problems. Companies take time to adjust to new trading conditions; market opportunities for export may be more limited than hoped; regulation and bureaucracy for imported food, feed and drink may not be improved by the trade agreement (dependent on its coverage); and there may be legitimate reasons why companies may not immediately take advantage of the preferential tariff regimes under the trade agreement.
12. For example, a 2018 report by Ecorys into the use of the EU's trade agreements by Dutch companies showed the companies did not take as much advantage of the trade agreements (a) when there were no *significant* cost savings between the standard (i.e. MFN) tariff and the preferential tariff under the trade agreement; (b) if the company could not demonstrate that the food, feed and drink to be exported complied with the rules of origin requirements in the trade agreement; and (c) where the importing partner did not request use of the preferential trade regime because the costs of complying with all the bureaucracy and the delays of scrutiny from customs authorities accompanying that trade agreement increased the costs of doing business.⁵ Retaining the free flow of food, feed and drink between the UK and the EU with minimal customs bureaucracy remains a priority for the UK food and drink industry, therefore.
13. If the UK and EU cannot conclude a trade agreement by the end of the transition period (31st December 2020), then **imports** of food, feed and drink from the EU into the UK will

³ House of Lords European Union Committee, *BREXIT: Agriculture*, HL Paper 169 (May 2017), 16–21.

⁴ European Commission, *Getting Ready for Changes: Communication on readiness at the end of the transition period between the European Union and the United Kingdom*, COM(2020) 324, & July 2020, A.1, p6; Revised Protocol on Ireland and Northern Ireland, 31 January 2020;

⁵ ECORYS, *Study on the use of Trade Agreements*, 22 June 2018, 40.

be subject to the UK's external border controls that apply to all countries with which the UK does not have a trade agreement. This means that all imports of food, feed and drink from the EU to the UK will be subject to UK tariffs (the Global Tariff, 'UKGT'). While the tariff on some processed foods, like cocoa powder, imported into the UK will drop to zero, tariffs on many agricultural products remain. For example, the UKGT on frozen lamb carcasses and half carcasses will be 12% + £107 per 100kg, which is a simple currency conversion from the EU's existing standard (MFN) tariff on the same product.⁶

14. Food, feed and drink imported into the UK from the EU will also be subject to border controls (different rules apply to the Northern Irish Border). The UK plans to phase in border controls governing EU-UK trade in three stages: (1) from 1 January 2021; (2) from 1 April 2021; and (3) 1 July 2021. Stage 1 phases in general border entry requirements for all goods, including food, feed and drink. Stage 2 requires further certification and entry requirements for animal products, fish, high-risk food and feed (not of animal origin), plants and plant products specifically. Stage 3 implements full border controls for all products.⁷
15. The UK's tariffs and border controls will mean that costs for UK business importing food, feed and drink into the UK will increase because: (a) the cost of the tariff and of obtaining the relevant customs documentation may be borne by the importer; (b) customs checks will be necessary, which may increase delays at the border.
16. If a trade agreement cannot be concluded between the EU and the UK then (a) trade will no longer be frictionless, which will increase costs for business; (b) delays due to customs checks could adversely affect viability of importing some goods, particularly perishable products; (c) the UK's proposed phase in of border controls on goods coming in from the EU are problematic because they potentially violate WTO's non-discrimination rules.⁸
17. The UK government's default option of 'trading on World Trade Organization (WTO) rules' might not be the panacea the government hope because the WTO is experiencing its own headwinds: its dispute settlement mechanism is stymied by American opposition to the appointment of new appeals judges, and two of the world's largest economies, the United States and China, are currently involved in a trade war. 'Free trade' is a historic phenomenon, more relevant to the 1990s than to the twenty first century trading system. Countries are increasingly looking to their own needs, rather than focusing on keeping their borders open by lowering import taxes (tariffs) and removing export restrictions on trade in staple foods.
18. Maintaining high food standards on trade in food from all sources is a critical consumer priority following the Covid-19 outbreak, whether through an EU-UK trade agreement, or through autonomous UK trade measures. For example, Which? reported in July 2020 that 95% of people surveyed in the UK between May and June this year wanted the UK

⁶ The UK Global Tariff from 1 January 2021: <https://www.check-future-uk-trade-tariffs.service.gov.uk/tariff?q=&n=25&p=5>

⁷ HM Government, *The Border with the European Union: Importing and Exporting Goods*, July 2020, 3, 11, 24-27, 32-48, 66-81, 82-120.

⁸ Violation of Article I.1 GATT and Article 2.3 Agreement on Sanitary and Phytosanitary Measures (among others).

government to maintain high food standards.⁹ WTO law is starting to look more favourably on countries protecting high food standards using trade measures (through labelling schemes, import restrictions), than it did in the past. Such measures must be implemented on a non-discriminatory basis however.¹⁰

D. The Impact of Covid-19 on Agrifood Sector

19. The flow of food, from farmers to distributors along to traders and finally on to the consumer, is part of a complex system known as agrifood supply chains.
20. Modern agrifood supply chains operate on a just-in-time basis, allowing retailers to keep prices low by retaining only sufficient stocks to satisfy short-term demand. A supply chain will involve multiple businesses supplying into one or multiple chains. Supply chains might be concentrated in one country, like the UK, but in the case of large complex chains, businesses supplying into the chain will be located in many countries.
21. Frictionless trade in food, feed and drink is critical to the operation of *all* agrifood supply chains. In order to keep costs low, all inputs into the agrifood supply chain will be sourced from anywhere in the world: production is disaggregated, so raw materials, processing and retail can all be undertaken in different countries, with the raw materials and semi-processed foods crossing and recrossing geographic borders multiple times before the food is finally sold in the supermarket. This means that trade through supply chains does not follow conventional ideas of goods and services simply crossing borders. Instead, it is better to think in terms of the *value* that is added to each stage of the supply chain in a particular country, before the product moves on to another country for another stage of production before final consumption (and reintegration of waste back into the production cycle). The term 'trade in value added' is used to better inform policymakers about the patterns of trade within supply chains and how their trade policies affects the flow of value through the chain. Following the way value (rather than goods and services) flows through supply chains helps identify why the impact of Covid-19 on the agrifood sector seemed so unpredictable.¹¹
22. Some disruptions to the supply chain, like extreme weather events, geopolitical change, renegotiation of trade agreements and global financial downturns are anticipated and planned for, but the Covid-19 pandemic caused disruptions on a different scale.
23. Short term supply problems during by the early stages of the pandemic (December 2019-April 2020) were caused by national lockdowns; countries imposing export restrictions on key staples, like rice and cereals; the shutdown of the hospitality sector; unreliable supplies of seeds, fertilizers; the shortage of seasonal farm workers (due to

⁹ Which? *Why labels won't protect UK food standards from a US trade deal* 25 June 2020,

<https://www.which.co.uk/news/2020/06/why-labels-wont-protect-uk-food-standards-from-a-us-trade-deal/>

¹⁰ On labelling and certification to protect standards, see *US-Tuna II*, Second Recourse to Article 21.5DSU, Appellate Body Report (WT/DS381/AB/RW/USA, WT/DS381/AB/RW2), 14 December 2018, summary of legal findings at paras 7.2-7.11; a WTO member has a 'right to regulate' on key policy issues provided it does so in a non-discriminatory manner: see *US-Clove Cigarettes*, Report of the Appellate Body, (WT/DS406/AB/R), 4 April 2012, para 95; also on the use of import restrictions see *EC-Seals*, Report of the Appellate Body, (WT/DSA400/AB/R, WT/DS401/AB/R), 22 May 2014, paras 5.168-5.254 .

¹¹ OECD, 'Trade in Value Added Indicators,' 2020 edition: <https://www.oecd.org/sti/ind/measuring-trade-in-value-added.htm>; <https://www.oecd.org/industry/ind/tiva-2018-flyer.pdf>

quarantine and travel restrictions), employees in retail, distribution and manufacturing due to illness and 'shielding'; transportation and storage facilities; and price volatility.

24. For example, UK employee absence rates were estimated to be around 20%, spread across the food retail, distribution, and manufacturing sectors. These rates were caused by illness, but also because some employees were shielding either due to their own vulnerability, or that of a household member.¹²
25. Global disruption to food supply chains were caused by the increase in trade restrictions on exports of key staples. For example, in April 2020, the UN pleaded that countries maintain continuous flows of food globally and not resort to export restrictions of key commodities.¹³ This move was supported too by a statement from the G20 committing to open trade in "critical agricultural products". Global Co-operation to keep trade in food open was announced between key international organizations, including the International Monetary Fund (IMF), World Bank, WTO and the World Customs Organisation (WCO).¹⁴ Despite this plea, 14 WTO members notified the WTO that they had imposed export restrictions on foodstuffs during the pandemic, with Thailand, Vietnam and Kazakhstan, using export restrictions on key staples, including rice, eggs, cereals and oilseeds which are critical to food, feed and drink supply chains. The WTO also noted that past experience from the earlier food crisis (2008-2012) showed that countries are slow to remove such export restrictions and may keep them in place long after the immediate crisis has been averted.¹⁵
26. Some food producers adapted quickly by adapting their supply modalities, for example making use of online marketplaces to reach new consumers, by reducing their product-ranges, and businesses like Amazon are entering the online food service sector. Some producers shared knowledge and resources (e.g. staff, facilities, distribution). Local markets, small shops and suppliers (e.g. take-aways) provided local continuity to the food supply, especially in deprived neighbourhoods. The social, as well as economic, benefits of these smaller players is increasingly being recognised.
27. Food supplies from retailers to consumers during the pandemic were more resilient than expected. This was due in part to the existence of frictionless trade in food, feed and drink from the EU. 80% of all food imports to UK supermarkets come from the EU.¹⁶ A UK-EU trade agreement that delivers as frictionless trade as possible will support the UK's food security if there is a second wave of Covid-19 and protect against the effects of climate change on climate change.
28. Ongoing challenges for the agrifood sector caused by Covid-19 are:

¹² Evidence from Ian Wright CBE, Director General Food and Drink Federation, to House of Commons International Trade Committee, *The Impact of Coronavirus on Businesses and Workers*, HC 286, 30 April 2020, (response to Q106).

¹³ UNCTAD, *Export Restrictions: Fighting Covid-19 with hands tied*, 28 April 2020.

¹⁴ [https://g20.org/en/media/Documents/G20_Extraordinary%20G20%20Leaders%E2%80%99%20Summit_Statement_EN%20\(3\).pdf](https://g20.org/en/media/Documents/G20_Extraordinary%20G20%20Leaders%E2%80%99%20Summit_Statement_EN%20(3).pdf)

¹⁵ WTO, *Export Prohibitions and Restrictions*, Information Note by the WTO Secretariat, 23 April 2020, 7-8.

¹⁶ Evidence from Andrew Opie, Director of Food and Sustainability, British Retail Consortium, to House of Commons International Trade Committee, *The Impact of Coronavirus on Businesses and Workers*, HC 286, 30 April 2020, (response to Q103).

- a. continuing pressure on supplies of seasonal workers from Eastern Europe due to ongoing travel and quarantine restrictions exacerbated by uncertainty over immigration policy after the end of the transition period;
- b. whether countries will remove restrictions on the export of essential foodstuffs critical to the agrifood supply chain following the discovery of an effective vaccine or treatment for Covid-19. The WTO rules focus on *import* restrictions, and there are few rules governing restrictions on exports, so there is little international regulation to prevent such measures.
- c. The agrifood sector continues to suffer from the adverse effects of Covid-19. Supply chains have started to falter as small and medium-sized companies operating routinely on thin margins in key parts of the supply chain go out of business, with snowball effects for other players.
- d. The World Trade Organization reports up to 32% decline in global trade Between January-April 2020 and that Covid-19 has plunged the world into a deep recession.¹⁷ A global recession could put further downward pressure on companies' profitability, leading to further bankruptcies and reduction in sector capacity, unemployment and household finances for food access, and accelerating the need for food aid across the world in the medium to long term.
- e. The predicted global recession leads to a consolidation in the food sector results in more financially stable multi-national companies merge or acquire financially weaker companies. If fewer, more powerful global food companies exist, new unfavourable supply terms could be forces onto smaller food producers and processors. Such unfavourable terms can result in significant loss of profits for the suppliers, which in turn could result in further bankruptcies. Some companies are also aggressively targeting the online food sector, which may signal more competition for traditional supermarkets and potential for new players entering the food marketplace. Informal markets are also emerging which may pose problems for food regulators.¹⁸

August 2020

¹⁷ WTO, *Trade Forecast*, April 2020, https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

¹⁸ Smith, Wong, Young, Orfila, Jensen & Banwart, *The Impact of Covid-19 on Agrifood Supply Chains*, July 2020. http://www.leeds.ac.uk/download/1087/the_impact_of_covid-19_on_agrifood_supply_chains



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

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16 July 2020

Professor Fiona Smith
Professor in International Economic Law
University of Leeds

Dear Professor Smith,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

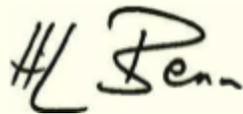
- What are the key priorities of the agri-food sector in the negotiations?
- To what extent did the UK Government consult the agri-food sector before publishing its negotiating aims and draft texts? How well does what the Government has proposed meet their needs? What further provisions would you have advised the Government to seek?
- How do the UK and the EU's positions in the negotiations on the future relationship compare regarding agricultural products and food? What is your assessment of the level of technical detail the negotiators have grappled with on this topic to date? How might they impact on the agri-food sector? Could you sketch out a possible compromise in this area?
- How do the UK and the EU's positions in the negotiations on the future relationship compare regarding geographical indications and plant varieties? How do they compare to the provisions already in the Withdrawal Agreement? How might they impact on the agri-food sector? Could you sketch out a possible compromise in this area?
- How do the UK and EU's positions in the negotiations on the future relationship compare regarding the transportation of goods? To what extent are they linked with the wider discussions on the level-playing field? How might they impact on the agri-food sector? Could you sketch out a possible compromise in this area?
- How do the UK and EU's positions in the negotiations on the future relationship compare regarding Rules of Origin? How might they impact on the agri-food sector? Could you sketch out a possible compromise in this area?
- How do the UK and EU's positions in the negotiations on the future relationship compare regarding labour mobility? How might they impact on the agri-food sector? How might any concerns from the agri-food sector be addressed by the new immigration regime?
- How would the Northern Ireland Protocol interact with any free trade agreement covering agricultural products and food? What are the risks and opportunities to GB and

NI agri-food producers and retailers of the potential difference in the agri-food regime across the Irish Sea?

- Based on the parameters set out by the UK and EU draft legal texts, could reaching an agreement with the EU restrict the UK's ability to pursue a free trade agreement covering agricultural products and food with third countries? If so, how? Do you anticipate the Trade and Agriculture Commission examining this topic?
- What would happen if agreement was not reached between the UK and the EU on agricultural products and food? What would be the impact on UK farmers of having to pay tariffs?
- If there was no agreement, what would be the international legal baseline they would fall back on?
- How might the Border Operating Model assist the agri-food sector in adjusting to a scenario whereby the Transition Period ends without a trade agreement in place?
- Is it clear what the agri-food sector must do to prepare for the end of the Transition Period? How much progress have been made on preparations so far? Do SMEs face any additional challenges?
- What has been the impact of Covid-19 on the agri-food sector? What lessons can be learned from this that could assist in preparations for a new regime after the Transition Period ends?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours,

A handwritten signature in black ink, appearing to read 'H. Benn'.

Hilary Benn
Chair of the Committee